

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tiffany Dempsey	Team: Team # 1	CCRB Case #: 201311232	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/01/2013 12:01 PM	Location of Incident: § 87(2)(b)	Precinct: 05	18 Mo. SOL 6/1/2015	EO SOL 6/1/2015	
Date/Time CV Reported Sun, 12/01/2013 6:04 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 12/01/2013 6:04 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenneth Scarola	18017	937503	PSA 4
2. POM Ayotunde Adeniyi	10717	934370	PSA 4
3. SGT Carlos Roberts	4145	937889	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rodney Skipper	18519	931995	PSA 4
2. POF Liliana Jimenez	03646	940306	PSA 4
3. POM Brendan Kelly	13425	943431	PSA 4
4. POF Jessica Rivera	18470	931928	PSA 4
5. POM Patrick Plunkett	03208	937297	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Ayotunde Adeniyi	Abuse: PO Ayotunde Adeniyi refused to provide his name to § 87(2)(b)	§ 87(2)(b)
B.SGT Carlos Roberts	Abuse: Sgt. Carlos Roberts supervised the entry and search of § 87(2)(b)	§ 87(2)(b)
C.POM Ayotunde Adeniyi	Abuse: PO Ayotunde Adeniyi searched § 87(2)(b)	§ 87(2)(b)
D.POM Ayotunde Adeniyi	Force: PO Ayotunde Adeniyi used a chokehold against § 87(2)(b)	§ 87(2)(b)
E.POM Kenneth Scarola	Abuse: PO Kenneth Scarola refused to provide his name to § 87(2)(b)	§ 87(2)(b)

Case Summary

On December 1, 2013, at approximately 12:01 p.m., Sgt. Carlos Roberts, PO Ayotunde Adeniyi, PO Kenneth Scarola, and other officers of PSA4 responded to an alleged assault in progress at § 87(2)(b) in Manhattan. § 87(2)(b) alleged that once the apartment door was opened, PO Adeniyi refused to provide his name and the officers entered the apartment (**Allegations A and B**). § 87(2)(b) alleged that PO Adeniyi searched the holsters on his belt which were on a pair of pants he was not wearing and later removed his cell phone from his shirt pocket (**Allegation C**). § 87(2)(b) also alleged that PO Adeniyi placed his arm around § 87(2)(b)'s neck, grabbed the lapel of his collar, and removed his cell phone from in front of him while handcuffing him (**Allegation D**). PO Scarola allegedly refused to provide his name to § 87(2)(b) while transporting him to § 87(2)(b) to be psychologically evaluated (**Allegation E**) (IAB log encl. B1-2, complaint encl. B3-4, phone statement C1, and CCRB statement encl. C2-11).

Mediation, Civil and Criminal Histories

This case was ineligible for mediation. § 87(2)(b) has not filed a Notice of Claim as of October 17, 2014 (encl. F1), and has no prior criminal convictions.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. A11).
- PO Adeniyi has been a member of the NYPD for 10 years, has had four previous CCRB allegations involving two cases with no substantiated allegations against him (encl. A8).
- Sgt. Roberts has been a member of the NYPD for nine years, has had one previous CCRB allegation against him which was exonerated (encl. A9).
- PO Scarola has been a member of the NYPD for nine years, has had two previous CCRB allegations involving two cases with no substantiated allegations him (encl. A10).

Finding and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated three black males entered his apartment. The three black males were identified by investigation as PO Adeniyi, PO Skipper and Sgt. Roberts. § 87(2)(b) described the subject officer who refused to provide his name to him, searched his holster, and placed him into a chokehold as a black male in his 40s who stands 5'8", has a medium build, a bald head, and a beard, and was wearing a hat and uniform. He described a second black officer, who aided the subject officer in handcuffing him, as a black male in his 40s who stands 5'7", has a medium build, a clean shaven face, and wears glasses. He was unable to describe the third black male officer. EMT § 87(2)(b) described one of the black male officers who handcuffed § 87(2)(b) as being 30-years-old, standing 5'8" tall, having an average build, wearing glasses, and being soft spoken. He did not describe this officer as having any facial hair. A male sergeant who wore chevrons on his sleeves aided this black male officer in handcuffing § 87(2)(b) he could not describe the sergeant otherwise.

PO Adeniyi confirmed entering the apartment, but did not confirm interacting with § 87(2)(b) verbally or physically once the door to the apartment was opened and did not confirm searching his holster. PO Adeniyi did not wear prescription glasses, and was not soft spoken during his in person interview. PO Skipper confirmed handcuffing § 87(2)(b). PO Skipper did not have facial hair or glasses, but was soft spoken during his in person interview. Sgt. Roberts did not match either description provided by § 87(2)(b) or § 87(2)(b) and did not confirm handcuffing § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g)

Recommendations

Allegation A – Abuse of Authority: PO Ayotunde Adeniyi refused to provide his name to § 87(2)(b)

According to § 87(2)(b) once he opened the door to the apartment, he asked PO Adeniyi for his name; however, PO Adeniyi ignored him and walked past him into the apartment with the other officers. § 87(2)(b) who was present when the door was opened and officers entered, did not allege that § 87(2)(b) asked any officer for his name, and § 87(2)(b) did not hear him ask any officer for his name. EMTs § 87(2)(b) and § 87(2)(b) did not recall if § 87(2)(b) asked any officers for their names. PO Adeniyi, PO Skipper, PO Scarola, PO Kelly, PO Jimenez, and PO Rivera all testified that § 87(2)(b) did not ask them or any other officer for their names when the door to the apartment was opened. Sgt. Roberts did not recall if § 87(2)(b) asked any officer for his name, including himself, and PO Plunkett did not recall the incident.

§ 87(2)(g)

Allegation B – Abuse of Authority: Sgt. Carlos Roberts supervised the entry and search of § 87(2)(b)

It is undisputed that officers arrived to § 87(2)(b) in response to a call of an assault in progress and § 87(2)(b) refused to let them enter.

Under exigent circumstances, officers may enter a home to effect an arrest given probable cause is provided. *People v. McBride*, 14 N.Y.3d 440 (2010) (encl. A1-7).

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Ayotunde Adeniyi searched § 87(2)(b)

It remains in dispute whether PO Adeniyi searched § 87(2)(b)'s holster and shirt pocket.

§ 87(2)(b) reported to IAB that officers searched his pants pockets because they believed he had a gun on his belt. During his phone statement, § 87(2)(b) stated § 87(2)(b) retrieved his pants for him, and when the officers saw his belt had multiple holsters, the officers stated he had a gun and mentioned that he had a knife on the kitchen table. He did not allege that the officers searched him or his holster during his phone statement. However, during his in-person interview, § 87(2)(b) stated when § 87(2)(b) retrieved his pants and belt, PO Adeniyi went inside all of the holsters on his belt including a holster that held a Leatherman knife. § 87(2)(b) wore the same belt and holsters to his CCRB interview; encl. C8.) However, later, § 87(2)(b) stated that PO Adeniyi saw the pant and belt in the bedroom and then searched each holster.

§ 87(2)(b) stated § 87(2)(b) left the kitchen even after the officers instructed him not to because they did not want him to retrieve a weapon. When the officers saw his pants and holstered belt in the kitchen, an officer whom she could not describe asked § 87(2)(b) if § 87(2)(b) had a gun; she told the officers that he did not. § 87(2)(b) did not allege that an officer searched the belt. Once § 87(2)(b) walked back into the kitchen, an officer whom she did not recall patted the outside of the pockets of the pants that § 87(2)(b) was wearing (not his work pants or belt).

§ 87(2)(b) stated that he saw § 87(2)(b) reach for a cell phone from his belt, and PO Skipper asked § 87(2)(b) what was inside the holster, if he had a gun, and to show him the holster. PO Skipper then opened the holster that appeared large enough for a Leatherman. § 87(2)(b) did not see anything inside the holster once it was opened. § 87(2)(b) did not see any officer pat down § 87(2)(b). § 87(2)(b) did not recall if the officers looked inside any additional holster on the belt. PO Skipper then handcuffed § 87(2)(b).

§ 87(2)(b) could not see § 87(2)(b) and the officers interacting and did not see whether he was searched.

PO Adeniyi did not search inside any holster on a pair of pants, nor did he recall seeing a belt with holsters during this incident. None of the additional officers who were interviewed observed PO Adeniyi or any other officer open or search inside a holstered belt.

§ 87(2)(g)

Allegation D – Force: PO Ayotunde Adeniyi used a chokehold against § 87(2)(b)

It remains in dispute whether PO Adeniyi placed § 87(2)(b) into a chokehold while removing his cell phone from him prior to placing him into handcuffs.

§ 87(2)(b) reported to IAB, officers grabbed him by the throat and handcuffed him; however, during his phone statement he stated that he was grabbed by the neck and feet. During his in-person interview, § 87(2)(b) stated that PO Adeniyi wrapped his left arm around his neck, and grabbed the lapel and collar of his long sleeve pajama shirt. When PO Skipper pulled § 87(2)(b)'s right hand behind his back, PO Adeniyi loosened his grip of § 87(2)(b)'s neck with his left hand and pulled § 87(2)(b)'s left hand behind his back and placed him into handcuffs. § 87(2)(b)'s breathing was not restricted.

§ 87(2)(b) stated that she left the kitchen before § 87(2)(b) was handcuffed and did not allege any force used against him. § 87(2)(b) only observed PO Skipper handcuff § 87(2)(b). § 87(2)(b) resisted being handcuffed, but no force or chokehold was used against him. § 87(2)(b) and § 87(2)(b) did not see § 87(2)(b) being handcuffed, nor did they see any officer use a chokehold against § 87(2)(b).

PO Adeniyi testified that § 87(2)(b) was handcuffed for officers' safety by officers he did not recall; he did not handcuff § 87(2)(b). PO Adeniyi did not place his arm around § 87(2)(b)'s neck at any point. None of the additional officers who were interviewed wrapped his/her arm around § 87(2)(b)'s neck or observed another officer do so. PO Skipper and PO Scarola both testified that they were the two officers that handcuffed § 87(2)(b), not PO Adeniyi. PO Skipper stated that when § 87(2)(b) failed to comply with initial orders to place his arms behind his back, § 87(2)(b) moved his body and arms back and forth. PO Skipper and PO Scarola pulled § 87(2)(b)'s arms behind his back and handcuffed him. Sgt. Roberts stated that no officer placed § 87(2)(b) into a chokehold.

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Kenneth Scarola refused to provide his name to § 87(2)(b)

According to § 87(2)(b) while riding in the ambulance, he asked PO Scarola for his name. PO Scarola allegedly refused to give it to him and told him that his name was none of his business. § 87(2)(b) the EMT who rode in the back of the ambulance with § 87(2)(b) did not recall hearing § 87(2)(b) ask an officer for his name while inside the ambulance, or hearing an officer tell § 87(2)(b) his name was none of his business. PO Scarola testified that § 87(2)(b) did not ask him for his name, his name was presented on his uniform, and if § 87(2)(b) would have asked for it, he would have stated it to him.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date